

(31)  
5-7-01  
ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JERRY MASON,  
*Petitioner*

v.

ROBERT W. MEYERS,  
Superintendent,  
*Respondent*

: Civil No. 1:00-CV-1490

: (Magistrate Judge Smyser)

FILED  
HARRISBURG, PA

MAY 04 2001

MARY E. D'ANDREA, CLERK  
Deputy Clerk

**EXHIBIT "A" TO PETITIONER'S MOTION FOR DISCOVERY**

AND NOW comes the petitioner, Jerry Mason, by his attorney Daniel I. Siegel of the Federal Public Defender's Office, and files this Exhibit "A" to Petitioner's Motion for Discovery.

Respectfully submitted,

Date:

May 4, 2001

Daniel I. Siegel

Daniel I. Siegel, Esquire  
Asst. Federal Public Defender  
100 Chestnut Street, Suite 306  
Harrisburg, PA 17101  
Attorney for Jerry Mason  
Attorney ID # 38910

**EXHIBIT "A"**

1 THE COURT: You may step down. Watch  
2 your step getting down.

3 Ladies and gentlemen, we are going to  
4 take your mid-afternoon break for about 15 minutes  
5 so you can refresh yourselves and so that the  
6 court reporter and every one else can take a  
7 break.

8 Please do not discuss the case, as I  
9 instructed you before. You may be excused.

10 (Whereupon, a brief recess was taken.)

11 MR. KELLER: Our next witness is Mr.  
12 George Surma.

13 GEORGE SURMA,  
14 called as a witness on behalf of the Commonwealth,  
15 being duly sworn, was examined and testified as  
16 follows:

17 DIRECT EXAMINATION ON QUALIFICATIONS  
18 BY MS. CIANFLONE:

19 Q Mr. Surma, please state your full  
20 name and occupation for the jury?

21 A George J. Surma, and I am criminalist  
22 with the Pennsylvania State Police, Wyoming Crime  
23 Lab.

24 Q How long have you been so employed?

25 A 16 years.

1 Q And what training do you have as a  
2 criminalist?

3 A I have a B.S. Degree in biology from  
4 University of Scranton, plus on-the-job training  
5 with the State Police when I first became employed  
6 with them.

7 Q And what do your duties include as a  
8 criminalist?

9 Q My duties include the securing of  
10 evidence, the testing, examining, analysis of  
11 evidence, and making up reports containing the  
12 results of my analysis and testifying to those  
13 results in a legal proceeding.

14 Q And you have been doing this job for  
15 16 years?

16 A 16 years.

17 Q All with the Pennsylvania State  
18 Police?

19 A With the Pennsylvania State Police.

20 Q Where are you stationed with the  
21 police?

22 A I'm at Wyoming Crime Lab.

23 Q You are not a trooper?

24 A I am a civilian.

25 MS. CIANFLONE: I offer Mr. Surma as

1 an expert.

2 THE COURT: Any voir dire?

3 MR. MARSILIO: Yes, Your Honor.

4 CROSS EXAMINATION ON QUALIFICATIONS

5 BY MR. MARSILIO:

6 Q Mr. Surma, what is your educational  
7 background?

8 A I have a B.S. Degree in biology.

9 Q And when did you attain that?

10 A That was obtained in June of 1967.

11 Q And how long have you been employed  
12 by the Pennsylvania State Police?

13 A Approximately 16 years, 16 years  
14 March 20th.

15 Q And have you held any other chemistry  
16 related job?

17 A I was a medical technician for five  
18 years in a hospital before becoming employed with  
19 the Pennsylvania State Police.

20 Q Do you have any specific training  
21 other than your B.S. in biology?

22 A Well, I did attend some courses  
23 while I was a criminalist at the crime lab;  
24 courses in drug analysis, forensic microscopy, the  
25 analysis of blood, and the advanced electrophoresis

1 course in the analysis of blood.

2 MR. MARSILIO: I have no further  
3 questions, nor would I object to the admission of  
4 this expert as an expert criminalist.

5 THE COURT: He may be admitted as an  
6 expert criminalist.

7 DIRECT EXAMINATION

8 BY MS. CIANFLONE:

9 Q Mr. Surma, as your duties as an  
10 expert criminalist in the Pennsylvania State  
11 Police, you testified you analyze blood?

12 A Yes.

13 Q What other objects would you be  
14 analyzing in the course of those duties?

15 A I would analyze and compare hair  
16 fibers, glass, paints, drugs, other bodily fluids  
17 besides blood as saliva, seminal stains.

18 Q Do you do rape analysis?

19 A Yes, I do.

20 Q What does that entail?

21 A That normally involves the  
22 examination of items for the presence of semen.

23 Q What kind of items did you examine?

24 A I examine clothes from the victim,  
25 sometimes from the suspect. And also items that

1 are submitted under a rape case which is collected  
2 at a hospital from the victim.

3 Q In the course of your duties have you  
4 had occasion to examine any of the items from Joan  
5 Swerdon?

6 A Yes, I did.

7 Q Could you tell us first how you came  
8 into position of those items and what they were?

9 A Yes. I came into possession of these  
10 items on November 4, 1987. I obtained the  
11 evidence from our locked evidence room. The  
12 evidence was submitted on September 11, 1987, by  
13 Trooper Henry. And they remained in the evidence  
14 room until they were retrieved by me on November  
15 11th -- or November 4th, rather. And the evidence  
16 consisted of items of clothing from the victim and  
17 also a rape test kit.

18 Q Could you enumerate the items?

19 A Yes. The clothing consisted of a one  
20 bra, one pair of ladies panties, one pair of blue  
21 jeans, a sweat shirt, and a blue jacket.

22 Q And you also stated there was a rape  
23 test kit?

24 A Yes.

25 Q What did that contain?

1           A       That contained a slide, an air dry  
2 slide for the oral pharynx, a GC culture from the  
3 oral pharynx, fingernail scrapings with saline,  
4 saline lavage of oral pharynx, and combed pubic  
5 hairs, plucked or cut pubic hair, air dry vaginal  
6 slides, vaginal wiping in saline, saline lavage of  
7 the vagina, and a culture and GC culture from  
8 vagina and a brown envelope.

9           Q       Now, Trooper, I am going to show you  
10 what has been marked and admitted as  
11 Commonwealth's Exhibit No. 21. Could you please  
12 first tell me, are those your initials on the  
13 front of the bag?

14           A       Yes, they were.

15           Q       Could you also tell me what is inside  
16 the bag?

17           A       Inside the bag are a pair of panties.

18           Q       Okay. Could you please tell the  
19 Court and jury whether you recognize the panties?

20           A       Yes, my initials T.G.S. appear on the  
21 panties.

22           Q       Are those the panties you analyzed in  
23 connection with Joan Swerdon's case?

24           A       Yes, they were.

25           Q       Could you please initially tell the



1 Court and jury what you do to analyze, what you  
2 did to analyze the panties?

3 A Well, essentially what I did is I  
4 examined the panties for any suspicious stains  
5 which I thought might be seminal stains.

6 Q Could you tell the jury then?

7 A I did find the stain in the crotch  
8 area which I tested.

9 Q How do you test them?

10 A First test that would be run or that  
11 I did run was acid phosphatase test. And what  
12 this test does is detect acid phosphatase "K"  
13 which is an enzyme found in large amounts in  
14 seminal fluid.

15 Q How did you test it?

16 A It is more or less a color test. We  
17 have a reagent or powder that we use to mix up  
18 reagents with. And what it does is that the  
19 suspicious area is moistened with distilled water,  
20 and it is blotted with filter paper and the filter  
21 paper is tested rather than directly testing, the  
22 test being directly performed on the panties or  
23 stain itself.

24 Q And what did the test reveal?

25 A The test showed that the test

1 indicates that there was acid phosphatase present.

2 Q And what does that mean?

3 A That means that it is, like I said,  
4 it's a presumptive test.

5 Q Okay.

6 A It doesn't confirm the presence of  
7 seminal acid phosphatase, it just indicates the  
8 presence of acid phosphatase. As to what the  
9 origin is, I went further with my testing and  
10 performed a microscopic on an extract from the  
11 stained area that I tested for acid phosphatase.

12 And this is done by extracting the  
13 area with -- or the area which is removed from  
14 the -- which was removed from the crotch of the  
15 panty with distilled water for several minutes and  
16 spinning the solution down in a centrifuge  
17 collecting a button, what we call a button, a  
18 button of the residue which is extracted from the  
19 stained area.

20 Q And this happened in the centrifuge,  
21 it pulls it apart?

22 A No, it is just a liquid that we put  
23 into a tube which is the extract from the stained  
24 area. And whatever residue or whatever particular  
25 matter that is in that tube will form a button at

1 the bottom of the tube.

2 Q And you examined the button?

3 A Yes, I did. I smeared it onto a  
4 glass slide and subsequently stained it with a  
5 certain dye that we use.

6 Q And what is that dye?

7 A It is called a Christmas tree stain,  
8 and it is very specific for spermatozoa. The head  
9 will appear to be red and the tail will appear to  
10 be green, so they stand out very vividly in a  
11 smear. They are most easily detected as a result  
12 of microscopic examination.

13 Q Now, when you smeared the slides with  
14 this --

15 A And I stained it.

16 Q And you stained it, what was  
17 revealed?

18 A As a result of microscopic  
19 examination, I found human sperm heads to be  
20 present.

21 Q You also stated that you examined the  
22 other items?

23 A Yes, I did.

24 Q Was anything of probative value found  
25 on those items?

1 A No, sir.

2 MS. CIANFLONE: No further questions.

3 CROSS EXAMINATION

4 BY MR. MARSILIO:

5 Q Mr. Surma, you analyzed this evidence  
6 on November 4, 1987, is that correct?

7 A Yes, that is.

8 Q But the evidence according to the  
9 notes you have was collected on September 11th of  
10 1987?

11 A That's correct.

12 Q So then those sperm heads were  
13 present on the crotch of those panties for almost  
14 two months?

15 A Yes, sir.

16 Q Were you able to ascertain in your  
17 testing the precise --excuse me.

18 Were you able to ascertain in your  
19 testing the approximate date when those sperm  
20 heads would have been deposited in the crotch of  
21 those panties?

22 A No, sir that's impossible to tell.

23 Q It is impossible to tell. So, you  
24 can't say with any degree of certainty that those  
25 sperm heads were deposited on those -- in the

1 crotch of those panties on the 8th of September of  
2 1987?

3 A That's correct.

4 Q Could they have been deposited on  
5 those panties at any time prior to the 8th of  
6 September of 1987?

7 A Possible.

8 Q How long prior to 8th of September,  
9 1987, could sperm heads been deposited in the  
10 crotch of those panties?

11 A I couldn't say.

12 Q Months?

13 A Possibly.

14 Q Mr. Surma, you got a lab report that  
15 has got a number of, it is indicated with  
16 87-1546C?

17 A That's correct.

18 Q Dated November 9th, 1987?

19 A Yes, sir.

20 Q And item 6-a from the rape test kit  
21 is a slide air dry from oral pharynx?

22 A Yes, sir.

23 Q What is that?

24 A That would be a smear that would be  
25 taken from the pharynx.

1 Q Okay.

2 A Placed onto a smear to a glass slide  
3 and dried and subsequently stained.

4 Q For us lay people, what is the  
5 pharynx?

6 A I believe that would be the voice  
7 box, around the voice box area of the throat.

8 Q And what were you looking for in that  
9 slide, if anything?

10 A I was looking for spermatozoa, sperm  
11 cells.

12 Q Did you find any?

13 A No, sir.

14 Q Item b, is the GC from oral pharynx,  
15 again, that is a general culture?

16 A Yes, I would assume that is what it  
17 would be, or else gonococcus culture. This was  
18 submitted to the laboratory by mistake. It should  
19 have never been, because we don't do those kinds  
20 of tests at the lab.

21 Q So a mistake was made as far as 6-b  
22 was concerned, and that is why that item is not  
23 tested?

24 A That's correct.

25 Q Now, item 6-c is a fingernail

1     scraping with saline?

2             A        Yes.

3             Q        What is that?

4             A        It's a scraping made of the inside of  
5     fingernails and submitted to the crime lab for  
6     purpose of examining for flesh, blood, fibers.

7             Q        And that scraping came from the  
8     victim?

9             A        I would assume, yes, the victim's  
10    hands.

11            Q        And what were you able to determine  
12    from that fingernail scraping?

13            A        Nothing of probative value was found.

14            Q        6-d is a saline lavage oral pharynx,  
15    could you explain what that is?

16            A        I believe what it is is a washing --  
17    they introduce liquid into the area and more or  
18    less suck it out in the form of a wash.

19            Q        Into the pharynx or the throat?

20            A        Yes.

21            Q        And was that analyzed?

22            A        Yes, it was.

23            Q        And what was determined from that?

24            A        No seminal fluid was found.

25            Q        Item 6-e, combed pubic hairs, what

1 did you do with that?

2 A Well, actually I didn't do anything  
3 with it because there were no hairs present.

4 Q Okay, explain that?

5 A Just a comb.

6 Q Explain that?

7 A The purpose of this examination is to  
8 examine the contents of the envelope for any  
9 evidence of foreign hairs which may be dissimilar  
10 to the victim's hair from the pubic region.

11 Q Okay.

12 A That is why --

13 Q So pubic hairs were somehow extracted  
14 from the victim and --

15 A They were combed out of the --

16 THE COURT: Wait, let's have the  
17 question first.

18 BY MR. MARSILIO:

19 Q Pubic hairs were combed from the  
20 victim's body and in those combings you're looking  
21 for the presence of hair belonging to someone  
22 else?

23 A Possibly belonging to someone else,  
24 foreign hair, yes.

25 Q What were you able to find from that



1 analysis?

2 A Like I mentioned previously, there  
3 were -- no hairs were found in the envelope.  
4 Evidently no hairs were obtained as a result of  
5 combings.

6 Q No hairs were obtained as a result of  
7 combings?

8 A That is what I assume, because there  
9 were no hairs present in the envelope.

10 Q Item 6-f is plucked or cut pubic  
11 hairs?

12 A Yes. These are samples that it  
13 states plucked or cut from the pubic hair of the  
14 victim for comparison with hair found in the  
15 combings.

16 Q So you were unable to complete that  
17 analysis because there was no combed hair in the  
18 envelope?

19 A That's correct, no hair to compare it  
20 with.

21 Q Item 6-g, air dry vaginal slide,  
22 would you explain what that is?

23 A Yes. This is a slide which is made  
24 from a swabbing made of the vagina, and it is air  
25 dried and subsequently stained for the presence of

1 spermatozoa.

2 Q Swabbing of the vagina?

3 A Yes, that's normally how it is taken.

4 Q How thorough is that swabbing?

5 A Well, it depends on what area of the  
6 vagina is swabbed, that would be a question for  
7 the doctor to answer.

8 Q And you won't know?

9 A I don't know the procedure.

10 Q What did Item g disclose if anything?

11 A Disclosed -- well, like I said,  
12 subsequently stained the slides and examined them  
13 microscopically, but no sperm cells were found.

14 Q And Item h is vaginal wiping in  
15 saline, again explain that?

16 A I would assume a wiping of the  
17 vaginal area and placed in the saline solution  
18 which was subsequently tested by me for the  
19 presence of acid phosphatase.

20 Q And what did you find?

21 A Which was negative.

22 Q Negative?

23 A Yes, sir.

24 Q Item i is saline lavage vagina?

25 A Again, a washing of the vaginal area.

1 Q Again please?

2 A Again, swabbing of the vaginal area  
3 which was subsequently tested by me for the  
4 presence of acid phosphatase. And again my  
5 results were negative.

6 Q 6-j says chlymidia?

7 A Yes, I believe that is another  
8 culture. I'm not sure.

9 Q You didn't test that?

10 A No, sir.

11 Q K is GC culture from vagina?

12 A Another culture which we don't test  
13 for.

14 Q Why did it take so long to get this  
15 test kit to you, if you know?

16 A Backlog. We were under a very heavy  
17 backlog at the time, and cases were to be taken in  
18 consecutive order. And it just took me that long  
19 to get to this particular case.

20 Q Now, the sperm cells or sperm heads  
21 that you found, are they dead?

22 A Yes they are.

23 MR. MARSILIO: Redirect.

24 REDIRECT EXAMINATION

25 BY MS. CIANFLONE:

1 Q Mr. Surma, would washing the panties  
2 take the sperm heads out?

3 A It is possible, yes.

4 Q So if they had been washed prior to  
5 Joan wearing them, there would be no sperm heads  
6 found?

7 A It is possible. Again, how  
8 thoroughly they were washed.

9 Q Now, all the while you stated that  
10 you received this evidence on September 11, but  
11 you never got to it until November 4th?

12 A That's correct.

13 Q All the while where was the evidence?

14 A It was in our locked evidence room.

15 Q At the Pennsylvania State Police?

16 A At the crime lab, yes, sir.

17 MS. CIANFLONE: Nothing else.

18 RECROSS EXAMINATION

19 BY MR. MARSILIO:

20 Q It is possible that washing the  
21 panties will take the sperm heads out?

22 A It is possible, sure.

23 Q So then it is also possible that  
24 after having washed the panties the sperm heads  
25 could remain on the panties?

1           A       It depends on how much the panties  
2 were washed, how thoroughly they were washed,  
3 that's a possibility.

4           MR. MARSILIO:   Okay.   Thank you. .

5           THE COURT:   You may step down.   Watch  
6 your step.

7           DEBORAH A. PATTERNAC,  
8 called as a witness on behalf of the Commonwealth,  
9 being duly sworn, was examined and testified as  
10 follows:

11           DIRECT EXAMINATION ON QUALIFICATIONS  
12 BY MS. CIANFLONE:

13           Q       Doctor, would you state your full  
14 name for the Court and jury?

15           A       Deborah Ann Patternac, M.D.

16           Q       And where do you practice?

17           A       I practice at the Wyoming Family  
18 Practice Residency Program.

19           Q       And what is your position there?

20           A       I am an instructor of family  
21 medicine.

22           Q       How long have you been a doctor?

23           A       For ten years.

24           Q       Could you just please tell the Court  
25 and jury about your educational background?

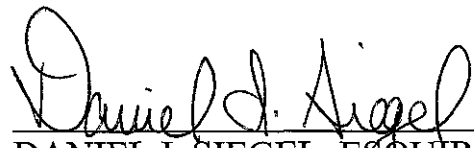
**CERTIFICATE OF SERVICE**

I, Daniel I. Siegel, of the Federal Public Defender's Office do hereby certify that on this date I served a copy of the foregoing **EXHIBIT "A" TO PETITIONER'S MOTION FOR DISCOVERY** by placing the same in the United States mail, first class, in Harrisburg, Pennsylvania, addressed to the following:

Frank P. Barletta, Esquire  
Assistant District Attorney  
Luzerne County Courthouse  
200 North River Street  
Wilkes-Barre, PA 18711

Jerry Mason  
Inmate No. BK-6012  
SCI Rockview  
PO Box A  
Bellefonte, PA 16823

Date: May 4, 2001

  
\_\_\_\_\_  
DANIEL I. SIEGEL, ESQUIRE  
Asst. Federal Public Defender  
Attorney for Jerry Mason